

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JOE ANDREW SALAZAR,

Plaintiff,

v.

AT&T MOBILITY LLC,
SPRINT/UNITED MANAGEMENT
COMPANY, T-MOBILE USA, INC.,
AND CELLCO PARTNERSHIP D/B/A
VERIZON WIRELESS,

Defendants

and

HTC CORP., and HTC AMERICA, INC.,

Intervenors.

Civil Action No. 2:20-cv-00004-JRG

JURY TRIAL DEMANDED

AGREED ORDER ON MOTIONS *IN LIMINE* (Dkt. #191 & #193)

Before the Court are the opposed motions in limine filed by Defendants and Intervenors (Dkt. #191) and Plaintiff (Dkt. #193). Having considered the motions and in view of the parties agreements as represented to the Court, the Court enters this Agreed Order.

Prior Litigation and Settlements of Parties (Salazar's MILs #1 & 2, Defendants' MIL #1)

GRANTED as modified by agreement:

No party will introduce any reference, evidence testimony (including expert testimony), or argument regarding, or inquire about or elicit any testimony concerning, unrelated litigations or settlements thereof involving the other party, including current or former affiliate entities.

With regard to *Salazar I*:

- No reference to *Salazar I* or the fact that Salazar previously sued HTC Corp. or asserted his patent against the accused phones.
- No impeachment testimony where the purported inconsistency is based on the Court's new claim construction.
- Impeachment testimony to be presented generically; i.e. "you testified under oath on this date that" (without reference to prior case).
- Counsel will ask to approach if counsel determines impeachment is proper and the impeachment will (1) reference *Salazar I*, so the parties and Court can confer to avoid the reference; or (2) will involve the testimony of a different expert from *Salazar I* so the Court can decide whether such testimony is admissible.

I3 Products and Marking (Salazar's MILs #3 & #4)

The parties agree that these motions *in limine* rise/fall with Salazar's motion for summary judgment on marking, Dkt. #144. If the Court grants Salazar's motion, then these MILs will be granted as agreed. If the Court denies Salazar's motion, these MILs will be denied.

Discovery Deficiencies (Salazar's MIL #5, Defendants' MIL #4)

GRANTED as modified by agreement:

No party will use purported deficiencies in party discovery to criticize or allege deficiencies in an expert's analysis. This agreement does not apply to failures to obtain evidence from a third party.

Expiration of the '467 Patent (Salazar MIL #6)

GRANTED as modified by agreement:

Evidence, statements, and arguments related to the '467 Patent being expired will be limited in scope to *Georgia-Pacific* Factor No. 7.

Delay in Filing Suit (Salazar's MIL #7)

GRANTED as modified by agreement:

No reference, evidence or argument about the effect of delay other than that the timing of Salazar's suit or purported delay in filing suit is indicative of his perceived value of the invention. The timing of Salazar's suit may be admissible as relevant to Defendants' marking defense subject to the Court's ruling on Salazar's motion for summary judgment on marking, Dkt. #144.

Wealth, Net Worth, Total Profits and Ability to Pay Damages (Defendants' MIL #2)

GRANTED as modified by agreement:

No reference, testimony or argument regarding Defendants' or Intervenor's wealth, net worth, total profits and/or ability to pay damages.

Disparaging HTC Corp.'s Foreign Incorporation or Nationality (Defendants' MIL #3)

GRANTED as modified by agreement:

No disparaging references to the nationality of HTC or its employees, including, but not limited to, that (1) Plaintiff must refer to a person or entity from Taiwan as "Taiwanese" rather than "Chinese," and (2) Plaintiff may not refer to Taiwan as the Republic of China.

Total Revenues and Sales Price (Defendants' MIL #IL.1)

GRANTED as modified by agreement:

Salazar agrees to not introduce Defendants' total service revenues, HTC's total revenue, or the sale price of the accused phones on the condition that Defendants do not criticize the accuracy of the damages' expert's calculation.

A party must approach the bench before introducing evidence or argument about the subject matter of a granted motion *in limine*.

SO ORDERED.